

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

TERESA A. LEE,	)	No. 05-4638 SC
	)	
Plaintiff,	)	
	)	ORDER GRANTING
v.	)	DEFENDANT'S CROSS-
	)	MOTION FOR SUMMARY
JO ANNE BARNHART,	)	<u>JUDGMENT</u>
Commissioner of Social Security,	)	
	)	
Defendant.	)	
	)	

**I. INTRODUCTION**

Teresa Lee ("Plaintiff" or "Claimant") moves for Summary Judgment on her action seeking review of the Social Security Commissioner's final decision denying her claim for Medicare benefits. Defendant Jo Anne Barnhart, the Commissioner of Social Security ("Defendant" or "Commissioner"), has filed a Cross-Motion for Summary Judgment. For the reasons explained below, the Court hereby DENIES Plaintiff's Motion for Summary Judgment and GRANTS Defendant's Cross-Motion for Summary Judgment.

**II. BACKGROUND**

**A. Claimant's Medical History**

Claimant, a female aged sixty-two, injured her lower back in 1990. Administrative Record ("AR") at 420. Various treatments

1 enabled her to return to work as a letter clerk for the United  
2 States Postal Service for one day in 1992 and two months in 1998,  
3 but she was otherwise unable to work following her injury in 1990.  
4 AR at 19, 420-21.

5 Dr. Lerman treated Claimant for pain in 1990 and 1991. He  
6 tried physical therapy, a steroid injection, and medication. AR  
7 at 355-59. He noted that Claimant "does perceive significant  
8 pain," but "her symptoms are out of proportion to her pathology."  
9 AR at 357. He referred her to Dr. Saal for pain management, who  
10 wrote that Claimant "clearly has substantial components of pain  
11 behavior, depression and reactive psychological changes." AR at  
12 353. Dr. Saal then referred Claimant to Dr. Schofferman, who  
13 became Claimant's primary physician for the next eleven years.  
14 Dr. Schofferman also recommended psychotherapy, but this course of  
15 treatment was discontinued after Claimant failed to show  
16 improvement after a year and a half. AR at 397. In November  
17 2003, Dr. Schofferman noted:

18 [H]er clinical condition has progressively gotten worse. It  
19 also has become complicated by depression secondary to her  
20 pain and impairment. She has an MRI scan that is abnormal.  
21 She has disc degeneration. Her clinical symptoms are  
22 consistent with her MRI findings. AR at 408.

23 B. Procedural History

24 On September 30, 2002, Claimant filed an application for  
25 disability insurance benefits under Title II of the Social  
26 Security Act, alleging disability since February 22, 1990. AR at  
27 36. The Social Security Administration ("SSA") denied her  
28 application in the first instance and then again on  
reconsideration. AR at 38, 43.

On December 10, 2003, at Claimant's request, the SSA held a hearing before an Administrative Law Judge ("ALJ"). AR at 18. Claimant testified that she has experienced constant lower back pain and depression since her injury in 1990. AR at 422-24. Dr. Schofferman, Claimant's treating physician, submitted reports indicating that Claimant was unable to perform any reasonable full-time job due to degenerative disc disease and depression. AR at 22. By contrast, Dr. Pon, the examining physician for the Disability Determination Service, noted that though Claimant had some "inhibition weakness" of the lower extremities, there was no objective evidence nerve root impingement. He concluded that Claimant had the functional capacity to return to work. AR at 229. Similarly, Dr. Jensen, the medical expert who attended the hearing, concluded that there was no objective evidence to confirm Dr. Schofferman's opinions. Dr. Jensen also stated that he believed Claimant could return to work. AR at 430-31.

The ALJ found that Claimant was not disabled and that she "was capable of performing a substantial number of light jobs," including most of the tasks required by her previous job. AR at 25. The Appeals Council declined to review the ALJ's decision, thus making the ALJ's decision the final decision of the Commissioner for purposes of judicial review. AR at 7. Claimant appeals the Commissioner's decision under 42 U.S.C. § 405(g). See Pl.'s Mot for Summ. J. ("Pl.'s Mot").

### **III. LEGAL STANDARD**

This Court may set aside the decision of the ALJ if it is

1 based on an incorrect application of the law or is not supported  
2 by substantial evidence. See 42 U.S.C. § 405(g). "Substantial  
3 evidence" is the relevant evidence which a reasonable person might  
4 accept as adequate to support the ALJ's conclusion. Reddick v.  
5 Chater, 157 F.3d 715, 720 (9th Cir. 1998). In order to be  
6 "substantial," the evidence must amount to "more than a mere  
7 scintilla," but need not rise to the level of a preponderance.  
8 Magallanes v. Bowen, 881 F.2d 747, 750 (9th Cir. 1989). Where the  
9 evidence could reasonably support either affirming or reversing  
10 the ALJ's decision, this Court may not substitute its judgment for  
11 the ALJ's decision. See Reddick, 157 F.3d at 720-21. "The ALJ is  
12 responsible for determining credibility and resolving conflicts in  
13 medical testimony and ambiguities." Lewis v. Apfel, 236 F.3d 503,  
14 509 (9th Cir. 2001).

#### 15 16 **IV. DISCUSSION**

17 For purposes of the Social Security Act, a person is  
18 disabled when she lacks the ability to "engage in any substantial  
19 gainful activity by reason of any medically determinable physical  
20 or mental impairment which can be expected to result in death or  
21 which has lasted or can be expected to last for a continuous  
22 period of not less than 12 months." 42 U.S.C. § 423(d)(1)(A).

23 Claimant challenges the ALJ's decision that she is not  
24 disabled for purpose of the Social Security Act on three grounds.  
25 First, Claimant contends that the ALJ improperly rejected the  
26 opinions of the treating physician. Pl.'s Mot. at 5. Second,  
27 Claimant maintains that the ALJ improperly discounted her symptom-

1 reporting. Id. at 7. Third, Claimant asserts that the ALJ's  
2 finding on past relevant work was improper. Id. at 9.

3 A. Whether the ALJ Improperly Ignored the Treating  
4 Physician's Opinion

5 The Court finds that the ALJ fully considered, rather than  
6 ignored, the treating physician's opinions and medical reports.  
7 The ALJ devoted a considerable portion of his evaluation to the  
8 findings of the treating physician, Dr. Schofferman. After  
9 discussing seven of Dr. Schofferman's reports from an eleven-year  
10 time period, the ALJ stated:

11 The undersigned gives little weight to Dr. Schofferman's  
12 above-noted opinions, as they are not consistent with the  
13 medical record as a whole, or with the doctor's own  
14 examination and treatment notes. The objective laboratory  
reports and X-rays in this matter are not consistent with the  
extremely reduced level of activity described by the doctor.  
AR at 23.

15 Upon discounting the opinions of the treating physician, the  
16 ALJ gave greater weight to the opinions of the examining  
17 physician, Dr. Pon, and the medical expert witness, Dr. Jensen.  
18 If the treating doctor's opinion is contradicted by another  
19 doctor, the ALJ may not reject this opinion without providing  
20 "specific and legitimate reasons supported by substantial evidence  
21 in the record." Lester v. Chater, 81 F.3d 821, 830 (9th Cir.  
22 1995), quoting Murray v. Heckler, 722 F.2d 499, 502 (9th Cir.  
23 1983). "This can be done by setting out a detailed and thorough  
24 summary of the facts and conflicting clinical evidence, stating  
25 his interpretation thereof, and making findings." Reddick v.  
26 Chater, 157 F.3d 715, 725 (9th Cir. 1998).

27 Where the opinion of the claimant's treating physician is  
28 contradicted, and the opinion of a nontreating source is

1 based on independent clinical findings that differ from those  
2 of the treating physician, the opinion of the nontreating  
3 source may itself be substantial evidence; it is then solely  
the province of the ALJ to resolve the conflict. Andrews v.  
Shalala, 53 F.3d 1035, 1041 (9th Cir. 1995).

4 In his evaluation, the ALJ provided specific and legitimate  
5 reasons as to why the report by Dr. Pon, who examined Claimant in  
6 December 2002, deserved more weight than that of Dr. Schofferman.  
7 AR at 22-24. Dr. Pon reviewed Claimant's medical records and  
8 performed a full physical examination. The ALJ described Dr.  
9 Pon's report and noted that though an X-ray revealed some disc  
10 narrowing, it was not severe enough to prevent Claimant's return  
11 to work. AR at 22, 229. Dr. Pon asserted that Claimant's  
12 condition would allow her "to stand and/or walk for a total of 6  
13 hours during an 8-hour workday . . . [and] sit for a total of 6  
14 hours during an 8-hour workday." AR at 229. Based upon his  
15 analysis of Dr. Pon's independent clinical findings, the ALJ was  
16 entitled to resolve the conflict in favor of Dr. Pon and against  
17 Dr. Schofferman.

18 The ALJ also credited the testimony of the medical expert,  
19 Dr. Jensen. "[R]eports of the nonexamining advisor need not be  
20 discounted and may serve as substantial evidence when they are  
21 supported by other evidence in the record and are consistent with  
22 it." Andrews, 53 F.3d at 1041. The testimony of Dr. Jensen was  
23 supported by, and consistent with, other evidence in the record,  
24 namely the testimony of Dr. Pon and the X-ray and MRI results  
25 which confirmed only mild findings of disc degeneration. AR at  
26 22, 23. Thus, the ALJ was entitled to regard the reports of Dr.  
27 Jensen as substantial evidence.

1 In summary, the Court must defer to the ALJ's findings of  
2 fact, provided that they are supported by substantial evidence.  
3 See 42 U.S.C. § 405(g) and Reddick, 157 F.3d at 720. "The ALJ is  
4 responsible for determining credibility and resolving conflicts in  
5 medical testimony and ambiguities." Lewis, 236 F.3d at 509. The  
6 Court finds that the ALJ's decision was supported by information  
7 contained in the Administrative Record, such as test results and  
8 physicians' reports on Claimant's medical condition. The Court  
9 finds no reason to disturb the ALJ's decision, based as it is on  
10 substantial evidence.

11 B. Whether the ALJ Improperly Discounted Plaintiff's  
12 Symptom-Reporting

13 Claimant contends that the ALJ did not offer clear and  
14 convincing evidence as to why Plaintiff's symptom reporting was  
15 inaccurate. Pl.'s Mot. at 8-9. The Ninth Circuit stated that  
16 when the Claimant has "produced medical evidence of underlying  
17 impairments consistent with his complaints and there is no  
18 affirmative evidence that he is malingering, the ALJ's reasons for  
19 rejecting [Claimant]'s testimony must be clear and convincing."  
20 Regennitter v. Commissioner, 166 F.3d 1294, 1296 (9th Cir. 1999).  
21 Contrary to Plaintiff's assertions, the ALJ had before him the  
22 clear and convincing evidence necessary to discount Plaintiff's  
23 testimony. Both medical experts, Dr. Pon and Dr. Jensen, stated  
24 that Claimant was capable of returning to work based upon their  
25 investigations. AR at 22, 23, 229, 430. While Dr. Jensen only  
26 reviewed the medical records, Dr. Pon performed a physical  
27 examination of Claimant as part of his evaluation. AR at 227-230.

1 The medical evidence indicated that Plaintiff had adequate  
2 flexibility in her lower extremities. AR at 22, 229. Moreover,  
3 the ALJ credited the results of several X-ray and MRI tests which  
4 revealed some disc compression, but no damage severe enough to  
5 support Plaintiff's claims. AR at 22. Because the ALJ's  
6 determination was based on clear and convincing evidence, the  
7 Court will not disturb the ALJ's decision to discount Claimant's  
8 symptom-reporting.

9 C. Whether the ALJ's finding on past relevant work was  
10 proper

11 Plaintiff also asserts that the ALJ failed to consider the  
12 effect of her mental limitations in evaluating her ability to  
13 return to work. Pl.'s Mot at 9. In this area, the ALJ "has a  
14 duty to make the requisite factual findings to support his  
15 conclusion." Pinto v. Massanari, 249 F.3d 840, 844 (9th Cir.  
16 2001). "This is done by looking at the 'residual functional  
17 capacity and the physical and mental demands' of the claimant's  
18 past relevant work." Id.

19 In his written decision, the ALJ made the requisite factual  
20 findings as to the alleged mental impairments. The ALJ found  
21 "that the claimant has mild restrictions of the activities of  
22 daily living; she has mild difficulties in maintaining social  
23 functioning; she has moderate difficulties in maintaining  
24 concentration, persistence, or pace." AR at 24. Furthermore, the  
25 ALJ described Claimant's residual functional capacity through the  
26 date last insured, listing her capabilities to perform a variety  
27 of physical and mental tasks. AR at 24. Finally, the ALJ  
28



1 credited Claimant's description of her job as a letter clerk for  
2 the United States Postal Service and noted that based upon his  
3 findings of fact, she was capable of performing past work and was  
4 not disabled under the SAA. AR at 24-25. The ALJ noted that  
5 Claimant's job comprised "unskilled" labor, which did not demand  
6 much concentration or pace. AR at 25. Thus, the ALJ performed  
7 the appropriate legal analysis and made proper factual findings  
8 with respect to Plaintiff's mental condition and relevant past  
9 work.

10  
11 **V. CONCLUSION**

12 Because the ALJ's decision was supported by substantial  
13 evidence, the Court finds no reason to disturb the final decision  
14 of the Social Security Administration.

15 Accordingly, Claimant's Motion for Summary Judgment is DENIED  
16 and Defendant's Cross-Motion for Summary Judgment is GRANTED.

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18 IT IS SO ORDERED.

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20 Date: December 8, 2006

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22 UNITED STATES DISTRICT JUDGE  
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